

IN THE PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH

CWP No.4603 of 1997

Date of Decision:28.01.2015

General Manager, Punjab Roadways, Jagraon and another

...Petitioners

Versus

Shri Ramesh Kumar and another

... Respondents

**CORAM : HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE DEEPAK SIBAL**

Present: Mr. K.K. Gupta, Addl. A.G. Punjab.

Mr. R.S. Manhas, Advocate for the respondents.

SATISH KUMAR MITTAL, J. (ORAL)

The General Manager, Punjab Roadways and the Divisional Manager, Transport Department, Punjab, Chandigarh-petitioners have filed the instant writ petition challenging the award dated 24.4.1996 passed by the Labour Court, Gurdaspur, whereby the labour Court in exercise of its power under Section 11-A of the Industrial Disputes Act, 1947 (for short “the Act”) set aside the order of termination of services of the respondent-workman after holding that the same was not justified being disproportionate to the alleged misconduct and ordered the reinstatement of the workman without back wages as also without any other monetary benefit.

The brief facts of the case are that respondent No.1-Ramesh Kumar was working as Conductor with the petitioners. On 1.12.1987, his services were terminated after holding a regular departmental enquiry on the charges that on 27.2.1987, respondent No.1-Ramesh Kumar being conductor had issued used tickets to the passengers travelling in the bus of

the Punjab Roadways. Respondent No.-1-workman chose to challenge the said order by filing a civil suit instead of availing his remedy under the Act.

Initially the civil suit was decided in favour of respondent No.1 vide judgment and decree dated 18.4.1990. However, on appeal by the Department, the said judgment and decree was set aside by the Appellate Court vide judgment and decree dated 7.2.1991. A copy of the same is annexed as Annexure P-4.

The Appellate Court after appreciating the evidence led by both the parties came to the conclusion that a fair and proper enquiry had been conducted by the department and on the proven misconduct, the order of termination of the services of respondent No.1 was rightly passed. The said judgment and decree passed by the First Appellate Court became final between the parties as Respondent No.1 did not prefer any further appeal against the said judgment and decree. However, he sought reference with regard to the same dispute under the Act and the matter was referred to the labour Court. Before the labour Court, the management-petitioners herein, raised the issue of res judicata. In view of the said objection, respondent No.1 pleaded that he was not challenging the finding recorded by the civil court, however, he submitted that he was only invoking the jurisdiction of the labour Court under Section 11-A of the Act to say that in the facts and circumstances of the case termination of the services of workman was not justified and was disproportionate to the proven misconduct. The labour Court also recorded a finding that in the present case, issue of res judicata was not arising and the only issue to be examined was whether the termination of the services of the workman was disproportionate to the proven misconduct or not. In this regard, the labour Court made the

following observations:

“It is true that once the order of termination is upheld by the Civil Court, the same cannot agitate again in the Labour Court. But there is one provisions under Section 11-A of the Industrial Disputes Act which gives the Labour Court inherent power to go into the question of severity of punishment. If the Labour Court comes to the conclusion that the punishment is not proportionate to the offence, then it can award lesser punishment. This power under Section 11-A is only granted to the Labour Court and not to any Civil Court. If the Civil Court is not empowered to give any relief such as given under Section 11-A of the Act to the workman, there is no question of the case being barred by the principle of res judicata if the workman has sought his relief only under this section. In the instant case, the workman has prayed that his case be considered under section 11-A of the Act and has stated that the punishment awarded to him is disproportionate to the gravity of the offence and he be awarded lesser punishment. I am of the considered opinion that this plea of the workman can definitely be entertained by the Labour Court under section 11-A of the Act. I am further supported by the following authorities:

“Co. of India (P) Ltd. Workman of Firestone Tyre and Rubber Co. of India (P) Ltd. v. The Management and other S.C. (1973-I-LLJ-278) High Court of Judicature of Madras (Cock Industries) Madras and Labour Court Madras Anothers (1992-I-LLJ) 1973.”

As such, I hold that the case is not barred by the principle of res judicata and this Court has the power to hear the case of the workman. Both these issues are decided against the respondent.”

After recording the aforesaid finding, the labour Court examined the facts of the case and recorded the following findings:

“After hearing the arguments advanced by the Authorised Representative's of the parties and going through all the aspects of the case, I find that it is a fit case where the provisions of Section 11-A are attracted. The extreme penalty of dismissal awarded to the workman is not commensurate with the gravity of offence. As such, I set aside the order of dismissal of the workman. The issue is decided

accordingly.”

In view of the aforesaid finding, the reinstatement of the respondent was ordered by the labour Court but without back wages or any other monetary benefits. The said order has been challenged by the petitioners in the present writ petition.

When the present writ petition was listed for hearing before this Court on 19.5.1998, following order was passed:

“Heard the learned counsel for the parties.

Shri Manhas has placed reliance on General Manager, Punjab Roadways Vs. Dharam Singh, 1996(3) S.C.T. 225 and Jitendra Nath Biswas Vs. M/S Empire of India and Ceylone Tea Co. and another, 1989 (2) RSJ 500 in support of his argument that the decree passed by the civil Court dismissing the suit filed by the petitioner does not operate as res judicata.

We have perused the judgments relied on by the learned counsel and have our serious reservations about the correctness of the proposition laid down by the learned Single Judge in General Manager, Punjab Roadways Vs. Dharam Singh (supra).

The writ petition is admitted to D.B for final hearing.

Till the disposal of the writ petition, operation of the award Annexure P1 shall remain stayed. However, the respondent No.1 shall be paid salary as per last drawn wages in terms of Section 17-B of the Industrial Disputes Act, 1947 upon his furnishing affidavit in terms of that section.”

In view of the aforesaid order, this case has been listed before us.

We have heard the learned counsel for the parties.

In our opinion, in the present case, the issue of res judicata does not arise. None of the parties is questioning the finding recorded by the civil court to the effect that a fair and proper enquiry was conducted by the department. Even respondent No.1 himself has made a statement before the

labour Court that he was not challenging the finding recorded by the civil court.

We have examined the matter in this aspect and have gone through the labour Court award. The labour Court in para-10 of the award has referred to the facts of the case and has held that punishment awarded to the respondent was disproportionate to his proven misconduct. However, while recording the finding, the labour Court has only observed that in its opinion it was a fit case where the provisions of Section 11-A be invoked. We do not agree with the labour Court on this aspect. In our opinion, the proven misconduct of issuance of used tickets is a grave misconduct and does not deserve any leniency in view of the judgment rendered by the Hon'ble Supreme Court in ***U.P.S.R.T.C. v. Mahendra Nath Tiwari and another***; 2006(1) SCC 118. The Hon'ble Supreme Court in similar facts has observed as under:

“It is misconception to consider that the amount involved in an offence of this nature has a material bearing, while considering whether there has been misconduct on the part of an employee. It may be relevant in a criminal prosecution when considering the quantum of punishment to be imposed. When a person like the conductor of a bus, who has the obligation to make proper collection of the charges from the passengers on issuing tickets to them, is found to have passengers in the bus, even if it be only one, to whom he had not issued a ticket, it clearly amounts to a clear violation of the duty imposed on him. It is really a breach of the duty cast on the conductor who is acting on behalf of the employer. Whether it be one passenger or ten passengers it would make no difference in principle in the absence of any explanation in that behalf. It was simply the difference in principle in the absence of any explanation in that behalf. It was simply the case of a conductor who had violated the Regulations or the terms of his employment and had betrayed his employer, which in any even, is a grave misconduct

justifying a dismissal.”

In our opinion, the aforesaid observation fully covers the issue raised in the present case against respondent No.1. The labour Court, in the present case, was not at all justified in interfering with the order of termination of the services of the respondent-workman in exercise of its power under Section 11-A of the Act.

During pendency of the present writ petition, it was directed by this Court that the respondent-workman would be paid the salary in terms of Section 17-B of the Act. We are informed that the same has been paid.

Since we have gone through the entire facts and circumstances of the case in hand, instead of referring this case back to the Single Judge for decision which would result in unnecessarily delay, this case is decided on merits by us.

Accordingly, this writ petition is allowed and award dated 24.4.1996 passed by the Labour Court, Gurdaspur, is set aside.

(SATISH KUMAR MITTAL)
JUDGE

(DEEPAK SIBAL)
JUDGE

28.01.2015
rajeev